



U.S. DEPARTMENT of STATE

Malawi

Country Reports on Human Rights Practices - [2004](#)

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On May 20, the country held its third election since transitioning to a multiparty democracy in 1994. President Bingu wa Mutharika of the United Democratic Front (UDF) was elected, succeeding President Bakili Muluzi, also of the UDF. International observers noted substantial shortcomings in the electoral process, including inequitable access to the state-owned media, the ruling party's use of state resources to campaign, and poor planning and administration by the Malawi Electoral Commission. Minor violence occurred when the final results were announced. Opposition parties filed legal challenges to the election results, which were still pending at year's end. Constitutional power was shared between a popularly elected president and the 193-member National Assembly, of which 185 members were elected on May 20. The ruling party had majority support in Parliament due to alliances with several other parties and a number of independents. The Government generally respected the constitutional provisions for an independent judiciary; however, the judicial system was inefficient and lacked resources.

The National Police, headed by the Inspector General of Police under the Ministry of Home Affairs, are responsible for internal security. The Malawi Defense Force, under the Ministry of Defense, is responsible for external security. The police occasionally called on the army for support. While the civilian authorities generally maintained effective control of the security forces, there were some instances in which elements of the security forces acted independently of government authority. Some members of the security forces committed human rights abuses.

The country was very poor, with a narrow economic base characterized by a small and highly concentrated industrial sector, low levels of foreign and domestic investment, and few mineral resources. The economy was largely market-based; however, parastatal organizations dominated several sectors. The population was approximately 11.5 million, and agriculture dominated the economy, with over 80 percent of the labor force employed in the agricultural sector. The Government continued to move forward with its multisector privatization program and endorsed private sector participation in infrastructure. The economy grew by approximately 3.7 percent during the year; however, wealth remained highly concentrated in a small elite.

The Government generally respected the human rights of its citizens; however, there were problems in some areas. Unlike in the previous year, police negligence or use of excessive force was not reported to be a factor in detainee deaths. Police on occasion used excessive force in handling criminal suspects. Prison conditions remained harsh and often life threatening. There were instances of arbitrary arrest and detention, and lengthy pretrial detention was a problem. Security forces at times infringed on some privacy rights. The Government generally respected freedom of speech and the press; however, there were some exceptions. Improvements in press freedoms occurred following the presidential elections. Limited self censorship existed. At times police used force against demonstrators, and police allegedly killed at least one bystander at a political rally. Violence against women was common, and women continued to experience severe societal discrimination. Abuse of children remained a problem. The Government limited workers' rights. Child labor, including instances of forced child labor, and trafficking in persons were problems. Mob violence triggered by anger over high levels of common crime resulted in several instances of mob executions of alleged criminals. HIV/AIDS was a serious problem in the country.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no confirmed reports of politically motivated killings by the Government or its agents; however, there was one high-profile case of a death under mysterious circumstances. On December 28, 2003, Kalonga Stambuli, a former private business advisor to the previous president, died of poisoning and strangulation. Prior to his death, newspaper reports indicated that Stambuli may have had potentially damaging information about the former president's business activities. A police investigation was ongoing at year's end.

Unlike the previous year, there were no reports of police mistreatment of a suspect that resulted in death.

The investigation into the death of Peter Mussa Gama, who died in police custody in September 2003, remained ongoing at year's end. The Malawi Human Rights Commission (MHRC) publicly called for compensation to Gama's family.

Police allegedly killed a 10-year-old girl during a political demonstration (see Section 2.b.).

On May 23, a man was killed by worshippers at a mosque after he sought refuge from tear gas fired by police (see Section 2.b.).

Mobs sometimes resorted to vigilante justice in beating, stoning, or burning suspected criminals to death. On May 17, in Mulanje, persons beat a man to death after he allegedly vandalized a church and terrorized a neighborhood. Authorities suspect the man was suffering from a mental disorder, and police intervened to take the victim to a hospital where he later died. No arrests were made in the case.

On August 15, a crowd beat a man to death for allegedly burglarizing a home near Blantyre. A police investigation into the murder was ongoing at year's end. In another August incident, a man was beaten to death after being caught allegedly stealing sugar cane near Kasungu. A suspect was arrested and awaited trial at year's end.

No action was taken by police in any of the 2003 or 2002 cases of mob killings.

b. Disappearance

There were no reports of politically motivated disappearances; however, during the year a key witness in a high-level corruption case went missing; some reports indicated the man committed suicide, while others said he was out of the country. Police were investigating the case at year's end.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits such practices; however, there were instances of police beating and otherwise abusing detainees and using excessive force in handling criminal suspects.

The Inspectorate of Prisons' 2002 report noted that police used beatings and assault to restrain prisoners and to force confessions. While higher ranking officials demonstrated familiarity with standards for the humane treatment of prisoners and publicly condemned prisoner mistreatment, their subordinates continued to employ unacceptable techniques. Police sometimes mistreated suspects due to a mistaken belief that the law required them to present a case (not just charges) to the court within 48 hours of arrest, and police sometimes resorted to beatings to obtain information within the time limit. Lack of financial resources for appropriate equipment, facilities, and training contributed to mistreatment.

Unlike in the previous year, there were no reports that police assaulted journalists.

Police violently dispersed demonstrations during the year, which resulted in numerous injuries and at least one death (see Section 2.b.).

Prison conditions remained harsh and life threatening. During the year, an average of 20 inmates died in prison each month, mostly due to HIV/AIDS. Overcrowding, inadequate nutrition, substandard sanitation, and poor health facilities remained serious problems. The prison system, which was meant to accommodate 6,200 inmates, held 9,220 prisoners, 191 of whom were juveniles. To combat these problems, the prison department developed and implemented a program to provide health attendants to each prison. At year's end, each prison in the country was staffed with at least one health attendant. Programs that provided community service alternatives for some offenders were utilized throughout the country.

During the year, the Government began a program with international donors to renovate the country's four major prisons, and a new prison was under construction in the northern region. Inmates were encouraged to grow vegetables and raise livestock. Some prisons were upgraded to include improved toilet and shower facilities and plumbing.

Although women were not kept in separate facilities, they were segregated within the prison compound and monitored by female guards. In the four maximum-security prisons, there were separate facilities for juveniles; however, the separation was inadequate in practice, and there were reports of sexual and physical abuse of juvenile prisoners. In the other prisons, juveniles were routinely incarcerated with adults. The law requires pretrial detainees to be held separately from convicted prisoners; however, many prisons could not comply with this law due to lack of space and inadequate facilities.

During the year, the Inspectorate of Prisons, domestic nongovernmental organizations (NGOs), and international NGOs were permitted to make visits to monitor prison conditions and to donate basic supplies. The Prison Reform Committee also worked in collaboration with the Ministry of Home Affairs and the Inspectorate of Prisons to visit prisons.

d. Arbitrary Arrest or Detention

The Constitution prohibits arbitrary arrest and detention, although there were problems in practice. The Constitution provides the accused the rights to challenge the legality of detention, to have access to legal counsel, and to be released on bail or informed of charges by a court of law within 48 hours; however, these rights seldom were respected in practice.

The country's police force was inefficient, poorly trained, and inadequately funded. Due to funding limitations, police had extremely limited resources available for training and equipment, and were limited in their ability to provide an infrastructure to ensure respect for human rights. Corruption was widespread. Police continued efforts to improve investigative skills and to introduce the concept of victims' rights through workshops and other training exercises, particularly in the areas of sexual abuse and domestic violence (see Section 5). The Government continued to seek community involvement in its comprehensive reform of the police. During the year, civil society groups conducted workshops for the police on crowd control measures and management of demonstrations. The country also received foreign assistance during the year to train officials and procure equipment.

The use of temporary remand warrants to circumvent the 48 hour rule was widespread (see Section 1.c.). In cases where the court determined that a defendant could not afford to supply his own counsel, the Government provided legal services. However, since few persons were able to afford legal counsel and there were only seven public defenders in the country, indigent detainees could not all have representation in a timely manner. Bail frequently was granted to reduce prison overcrowding, rather than on the merits of an individual's situation.

Police arrested some journalists and demonstrators during the year (see Sections 2.a. and 2.b.).

Police were accused of arbitrary arrests due to political motives and were routinely criticized for failing to act impartially with regard to political demonstrations.

Of the 9,220 persons incarcerated in the country's prisons, 1,595 were pretrial detainees; of the 191 juveniles held, 91 were pretrial detainees; and of the 58 women held, 37 were pretrial detainees.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice; however, the judicial system was inefficient and was handicapped by serious weaknesses, including poor record keeping, a shortage of attorneys and trained personnel, heavy caseloads, and lack of resources.

The Constitution provides for a High Court, a Supreme Court of Appeal, and subordinate magistrate courts. The Chief Justice is appointed by the President and confirmed by the National Assembly. The President appoints other justices, following a recommendation by the Judicial Service Commission. All justices are appointed until the age of 65 and may be removed only for reasons of incompetence or misbehavior, as determined by the President and a majority of the Parliament.

By law, defendants have the right to a public trial but not to a trial by jury; however, in murder cases, the High Court used juries of 12 persons from the defendant's home district. Defendants also are entitled to an attorney, the right to present and challenge evidence and witnesses, and the right of appeal. The judiciary's budgetary and administrative problems effectively denied expeditious trials for most defendants. During the year, the Department of Public Prosecutions had 10 prosecuting attorneys and 7 paralegals. The paralegals served as lay prosecutors and prosecuted minor cases in the magistrate courts. Lack of funding and a shortage of attorneys created a backlog, mainly in murder cases.

On May 18, the National Compensation Tribunal (NCT), which adjudicated claims of criminal and civil liability against the former dictatorship of Dr. Hastings Banda, was dissolved as a part of the democratic transition process. During its existence, the NCT registered nearly 25,000 claims, of which 342 were compensated fully and 5,247 were awarded interim compensation payments. The NCT's lack of funds limited its ability to settle claims, but some payments were made during the year.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution prohibits such actions; however, the Government at times infringed on these rights. In March, some civil society and human rights groups complained when police initiated a sweep to arrest prostitutes and their clients (see Section 5).

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press; however, at times the Government limited this right. Following the May elections, the Government made efforts to increase press freedom. Limited self censorship existed. The Government did not restrict academic freedom.

A broad spectrum of political and ideological opinion was available in the country's newspapers, usually without government interference. Five independent newspapers were available, including one independent daily and four independent weekly papers.

The state-owned Malawi Broadcasting Corporation (MBC) dominated the radio market with its two stations, transmitting in major population centers throughout the country. News coverage and editorial content were clearly pro-government.

There were 14 private radio stations, all broadcasting on FM frequencies with limited coverage and only in urban areas. These included: Two commercial stations broadcasting in Blantyre; a rural community radio station run by local women with the help of the Malawi Media Women's Association; and six religious stations.

Government owned Television Malawi (TVM) was the country's sole television broadcaster.

On March 10, the Public Affairs Committee, a civil society group composed of influential religious leaders, initiated legal action against MBC and TVM, challenging their bias toward the ruling party. These challenges generated renewed public interest in the issue of media freedom.

The ruling party interfered with the state-controlled media's freedom to interview opposition politicians who were critical of the Government. For example, on May 13, state-owned MBC radio halted the broadcast of a live interview with opposition party presidential candidate and former First Vice President Justin Malawezi. In the interview, Malawezi made highly critical remarks about the ruling party and administration, prompting station officials to cut short the time allotted.

On May 23, police shut down the Malawi Institute of Journalism, an independent radio station, and arrested four journalists after the station aired what was described as an "inflammatory interview" with an opposition party spokesperson. In the interview, the spokesperson called for the closure of airports and roadways to prevent guests from attending the presidential inauguration, and for the Malawi Defense Force to assume control of the Government. The reporters were released from custody and the charges were subsequently dropped.

There were no developments in the October 2003 assault of several journalists by police at a roadblock.

There were no developments in the formal inquiry into the 2002 assault on a journalist by a UDF parliamentarian.

During the election campaign period, opposition access to the media was limited. Electoral legislation requires that state-owned media provide equal access to all political parties during the election campaign period. However, regulatory bodies and the Malawi Electoral Commission (MEC) failed to enforce these provisions, resulting in uneven access to media resources. The ruling party frequently monopolized resources and used public funds for political campaign purposes. International election observers uniformly cited the lack of balanced media coverage as a limiting factor to the overall freedom and fairness of the electoral process. One political party sued TVM, MBC, and the MEC over the unfair media coverage.

On May 3, the MEC rebuked both MBC and TVM for not following media rules and guidelines during the campaign, but later that week withdrew the allegations and apologized.

Following international and domestic criticism of media access during the campaign period, officials in the newly elected Mutharika administration made efforts to reduce media bias.

On July 22, the new Minister of Information publicly called for MBC and TVM to allow dissenting views. MBC's Director General admitted that public broadcasters had not been free to interview the opposition for fear of losing their jobs.

The Government did not restrict access to the Internet; however, the Internet was not widely used.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly; however, there were instances in which police limited this right.

Authorities interfered with opposition party political functions, and in some cases, used violence to disperse crowds. Some opposition candidates were unable to obtain permits to hold political gatherings.

On February 22, two persons were shot when police used live ammunition and tear gas to break up an opposition rally at Njamba, near Blantyre. Police also destroyed a podium and platform erected for the event. According to police, the gathering, which coincided with a ruling party rally nearby, was illegal because it lacked proper permits. Opposition leaders maintained they had a court injunction allowing the event to take place. MHRC urged the Inspector General of Police to launch an investigation into the violence, but no action was taken by year's end.

On May 23, in Blantyre, police allegedly shot 2 protestors and arrested at least 96 others for rioting over the results of the presidential election. Police reportedly used live ammunition and tear gas to stop looting and vandalism immediately following the announcement of the election results. One man was reportedly beaten to death by a group of worshippers when he sought refuge from the tear gas in a nearby mosque (see Section 1.a.). The suspects arrested by police were released on bail within 48 hours of arrest and were awaiting trial. An investigation into the shootings was ongoing at year's end.

On May 24, a police officer attempting to break up a political demonstration allegedly shot 10-year old Epiphania Bonjesi. Bonjesi, a bystander, bled to death after being shot in the leg. Eyewitness accounts indicated the bullet was fired by police, and the investigation was ongoing at year's end. In an out-of-court settlement in October, the Government paid compensation to Bonjesi's family. There were unconfirmed reports of one other death as a result of police attempts to subdue post-election unrest.

No action was taken against police who used excessive force to disperse demonstrations in 2003.

No action was taken against UDF members who allegedly attacked Forum for the Defense of the Constitution demonstrators in 2002.

The Constitution provides for freedom of association, and the Government generally respected this right in practice. The Government required organizations, including political parties, to register with the Registrar General in the Ministry of Justice, and registration was routinely granted.

During the year, seven opposition parties united to form the Mgwirizano Coalition and fielded a common presidential candidate. Several opposition candidates allied with the ruling party after being elected.

The National Democratic Alliance (NDA) de-registered, and its leadership rejoined the ruling UDF.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice.

There were no separate requirements for the recognition of religions, but religious groups must register with the Government. There were no reports that the Government refused to register any religious group during the year.

Foreign Christian missionaries experienced occasional delays in renewing employment permits; however, this appeared to be the result of bureaucratic inefficiency rather than a deliberate government policy against foreign missionaries. Missionaries and charitable workers paid lower fees for employment permits than did other professionals.

During the 2004 presidential and parliamentary campaign period, some prominent Christian religious leaders frequently spoke about corruption, the electoral process, and the candidates. The churches' remarks were often openly critical of the ruling political party. While candidates and officials took issue with the churches' statements, the Government did not make attempts to silence religious leaders, other than declaring that such statements deviate from the proper role of religious leaders. Churches continued to be a significant source of political influence, particularly in rural areas.

There were generally amicable relations among the various religious communities; however, following the 2003 deportation of five Muslims allegedly associated with al-Qa'ida, violent protests led to the Muslims' targeting of Christian interests, such as churches and NGOs. Although tensions increased as a result of these events, there were no further protests during the year.

For a more detailed discussion, see the [2004 International Religious Freedom Report](#).

d. Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation

The law provides for these rights, and the Government generally respected them in practice.

The Constitution prohibits the use of forced exile, and the Government did not use it.

The law provides for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol, and the Government has established a system for providing protection to refugees. In practice, the Government provided protection against refoulement, the return of persons to a country where they feared persecution. The Government granted refugee status or asylum; however, there were long delays in the process. The Government cooperated with the office of the U.N. High Commissioner for Refugees (UNHCR) in assisting refugees and asylum seekers.

In August, the Government cooperated with UNHCR in conducting a re-verification exercise to assess the population of refugees

and asylum seekers in the country. According to UNHCR, the country hosted approximately 9,100 refugees, primarily from the Democratic Republic of the Congo, Rwanda, and Burundi, at a refugee center in Dowa. The majority of refugees resided at the Dzaleka camp, though UNHCR and the Government made efforts to relocate refugees to a second camp in Luwani that opened in October 2003. The law does not accept refugees for permanent resettlement and does not permit them to work or study; however, while no legal framework existed, the Government routinely allowed refugees to seek both employment and educational opportunities. UNHCR, NGOs, and the Government collaborated to provide children in refugee camps with access to education.

The country also provided temporary protection to certain individuals who may not qualify as refugees under the 1951 Convention/1967 Protocol.

In November 2003, the Government signed an agreement with the Government of Rwanda and UNHCR to voluntarily repatriate approximately 5,500 refugees who fled following the 1994 genocide in Rwanda. At year's end, only a small number of refugees had participated in the voluntary repatriation.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage for citizens 18 years of age and older. International election observers found the May 20 presidential and parliamentary elections to have substantial shortcomings, including inequitable access to the state-owned media, the ruling party's use of state resources to campaign, and poor planning by the MEC. Voter turnout was low compared with the two previous presidential elections. With approximately 36 percent of the popular vote, President Bingu wa Mutharika, chosen by former President Muluzi as the UDF candidate, was elected to serve a 5-year term, defeating opposition coalition candidate Gwanda Chakuamba, John Tembo of the Malawi Congress Party (MCP), Brown Mpingajira of the National Democratic Alliance, and Justin Malawezi, the former first vice president who ran as an independent candidate. The seats in the National Assembly were divided among several parties and independents: the UDF had 72 seats; the MCP had 58 seats; the Republican Party had 15 seats; the Alliance for Democracy had 7 seats; the People's Progressive Movement had 6 seats; the Movement for Genuine Democratic Change had 3 seats; the People's Transformation Party had 1 seat; and there were 22 Independent members. There was no clear cut ideological difference among the major political parties. The opposition challenged the outcome of the presidential vote, but had little success in legal proceedings due to lack of evidence. Following the election, there were 9 National Assembly vacancies. In 6 constituencies, election discrepancies prevented Parliamentary placement. The newly elected President and Vice-President each won parliamentary seats, but were constitutionally barred from holding other public offices. One seat was declared vacant after the winner's opponent successfully challenged the results. By-elections for these vacancies were scheduled to take place in January 2005.

President Mutharika, Vice President Cassim Chilumpha, and a 27-member cabinet exercise executive authority. The executive exerted considerable influence over the legislature; the legislature followed a hybrid parliamentary system, and consequently a number of Cabinet ministers also were Members of Parliament.

Although the Government did not prevent the operation of opposition political parties, the parties continued to allege that the Government used bribery and other inducements, including violence, to encourage opposition party divisions and defections of key personnel to the ruling party. President Mutharika acted quickly on his campaign promises to eliminate corruption in Government, and the Anti-Corruption Bureau (ACB) launched several investigations and made several arrests and indictments of former high-level Government officials. President Mutharika repeatedly stated that no officials were immune from prosecution for corruption. The President also replaced the heads of the ACB and the Director of Public Prosecution (DPP), which helped reinvigorate anti-corruption efforts.

Some opposition rallies were cancelled when organizers discovered at the last minute that the ruling party had decided to hold its own demonstration at the same venue on the same date or that permits could not be obtained in time. On occasion, members of the Young Democrats, the UDF youth wing, also disrupted opposition political rallies (see section 2.b.).

Sporadic minor violence was common between supporters of rival political parties.

Public access to information is guaranteed in Article 37 of the Constitution, and the Government respected this right in practice.

There were 27 women in the 193 seat National Assembly, and there were 6 women in the 28 member Cabinet. Women comprised approximately 25 percent of the civil service. There were 2 women justices among the 23 Supreme and High Court justices, and a woman was appointed as Inspector General of Police, the highest-level position in law enforcement.

Three citizens of mixed ethnicity were members of the National Assembly.

One cabinet minister, who was also an elected Member of Parliament, was a person with disabilities.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of domestic and international human rights groups operated without government restriction, training civic educators, advocating changes to existing laws and cultural practices, and investigating and publishing their findings on human rights cases. Government officials generally were cooperative and responsive to their views.

The Ombudsman was mandated by the Constitution to investigate and take legal action against government officials responsible for human rights violations and other abuses. The Ombudsman's freedom of action was circumscribed by legislation that requires a warrant and a 3-day waiting period to gain access to certain government records. The activities of the Ombudsman are subject to judicial review.

The constitutionally mandated MHRC was charged to monitor, audit, and promote human rights provided for under the Constitution, and to carry out investigations regarding violations of any human rights. Despite limited resources, the MHRC issued its 2003 Human Rights Report during the year, which described numerous complaints of human rights violations, such as overcrowding and poor sanitation in prisons, lack of proper medical attention to sick prisoners, long periods of pretrial detention, police brutality, child abuse, domestic violence, and the lack of opposition access to the media during elections.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The Constitution specifically provides for equal rights for women, forbids discrimination based on language or culture, and provides for equality and recognition before the law for every citizen; however, in practice, the capacity of government institutions to assure equal rights for all citizens was limited.

Women

Domestic violence, especially wife beating, was common, and women seldom discussed the problem openly; however, the press published frequent accounts of rape and abuse, and the judiciary continued to impose heavier penalties on those convicted of rape. Police regularly investigated cases of rape and sexual assault but did not normally intervene in domestic disputes.

The law does not specifically prohibit female genital mutilation (FGM), and there were anecdotal reports that a few small ethnic groups practiced it.

While prostitution is not illegal per se, living off the wages earned through prostitution, owning a brothel, or forcing another person into prostitution are illegal. In March, based on a presidential directive, authorities began a campaign to combat prostitution. Dozens of suspected prostitutes and some of their clients were detained and appeared before the courts. Some of those detained were convicted and assessed small fines, while others were found guilty of lesser violations or released with a warning. Civil society and women's advocacy groups protested the move as a violation of constitutional rights and as discriminatory to women, and NGOs offered the detainees pro bono legal services. A High Court Justice suspended the directive and no further action was taken.

Under the Constitution, women have the right to full and equal protection by law and may not be discriminated against on the basis of gender or marital status; however, in practice, discrimination against women was pervasive, and women did not have opportunities equal to those available to men. Women had significantly lower levels of literacy, education, formal and nontraditional employment opportunities, and access to resources to increase agricultural productivity. The literacy rate among women between the ages of 15 and 45 was 46 percent; male literacy in the same age group was approximately 79 percent.

Women often had less access to legal and financial assistance, and wives often were victims of discriminatory and illegal inheritance practices in which the majority of the estate was taken by the deceased husband's family. Women usually were at a disadvantage in marriage, family, and property rights; however, awareness of women's legal rights continued to increase, and women began to speak out against abuse and discrimination. Households headed by women were represented disproportionately in the lowest quarter of income distribution; 52 percent of the country's full-time farmers were women. Women typically worked more hours than men to complete the same farm tasks because they rarely had comparable tools and equipment, and they remained responsible for all household tasks. Women also had limited access to agricultural extension services, training, and credit. Gender training for agricultural extension workers and the gradual introduction of rural credit programs for women have increased; however, few women participated in the limited formal labor market, where they constituted less than 5 percent of managerial and administrative staff.

The law provides for a minimum level of child support, widows' rights, and the right to maternity leave; however, only individuals who utilized the formal legal system benefited from these legal protections.

The Government addressed women's concerns through the Ministry of Gender, Child Welfare, and Community Services. The President appointed a well-respected woman with a long history of successful social advocacy and program management to head this ministry. Women's issues, including gender balance in political representation, were central in the May elections.

Children

The Constitution provides for equal treatment of children under the law, and during the year, the Government continued a high

level of spending on children's health and welfare.

The Government provided free primary education for all children, although education was not compulsory. Families were responsible for book fees and purchasing uniforms. Students from very poor families had access to a public book fund. Girls, especially in rural areas, have historically been unable to complete even a primary education and therefore were at a serious disadvantage in finding employment. During the year, the University of Malawi released a report on the status of free primary education since its inception in 1994. The report noted that over the past decade, the Government increased its education budget annually, but the increases were not proportional to increasing student enrollment. Student dropout rates marginally decreased each year since free education was introduced, but the study concluded that rates remained high. The 2002 Malawi Demographic Household and Education Data Survey's report indicated that gender gaps in primary school attendance were small but that boys were much more likely to attend secondary school than girls. There also were large gaps in achievement levels between girls and boys.

In March, the Government took steps to respond to a UNICEF study that showed a number of girls entered into sexual relationships with teachers for money, became pregnant, and subsequently left school. The study also found that many girls left school because of violent behavior by some teachers. In response, the Government expanded legal protection of students subjected to exploitation and inappropriate relationships at school.

More than half of the country's children lived in poverty, mostly in rural areas. Children in rural households headed by women were among the poorest. Only one-third of children had ready access to safe drinking water, infant mortality was high, and child malnutrition was a serious problem. A few charitable organizations attempted to reduce the number of child beggars in urban areas; however, the problem of street children worsened as the number of orphans whose parents died from HIV/AIDS increased. Extended family members normally cared for such children and other orphans.

There were societal patterns of abuse of children. Kupimbira, a societal practice that allows a poor family to take out a loan for cattle or money in exchange for their daughter, regardless of age, has re-emerged over the last few years, according to press reports. The media also reported on the sexual abuse of children, especially in relation to traditional practices of initiation, though anecdotal evidence indicated these practices were becoming less common. While rites to initiate girls into their future adult roles still were secret, information suggested that abusive practices were widespread and very damaging.

During the year, the Government worked with UNICEF, international donors, and various NGOs to create and implement a Child Justice Act to ensure juveniles suitable access to the justice system. In July, a court dedicated to children's issues was established in Blantyre. The Ministry of Home Affairs, in conjunction with UNICEF, worked to establish 37 victim's support units nationwide.

FGM was performed in rare cases on girls (see Section 5, Women).

The trafficking of children for sexual purposes was a problem (see Section 5, Trafficking). The belief that children were unlikely to be HIV positive and the widespread belief that sexual intercourse with virgins can cleanse an individual of sexually transmitted diseases, including HIV/AIDS, contributed to the sexual exploitation of minors.

Child labor, including instances of forced child labor, was a problem (see Section 6.d.). Child prostitution occurred.

Trafficking in Persons

The law does not prohibit trafficking in persons specifically, and trafficking was a problem. The extent of human trafficking was undocumented. Police and the Ministry of Gender, Child Welfare, and Community Services handled cases brought to the attention of authorities. The Penal Code contains several provisions relating to prostitution and indecency that could be used to prosecute traffickers. Since 2001, seven cases involving trafficking in persons have been prosecuted; however, there were no arrests or prosecutions of suspected traffickers during the year, and no cases were brought to the attention of authorities.

Although the age of sexual consent is 14, there was no age specified for the protection of minors from sexual exploitation, child prostitution, or child pornography. During the year the government worked with UNICEF and NGOs to refine child protection laws (see Section 5, Children).

The country is a source for women and children trafficked for sexual purposes locally and to brothels abroad, particularly in South Africa. Victims trafficked to South Africa were typically between 14- and 24 years old, and were recruited with offers of marriage, study, or employment in South Africa. According to the International Organization for Migration (IOM), sex tourists, primarily from Germany, the Netherlands, and the United Kingdom, lured children into sexual relationships with them while in the country. Poverty and low educational levels contributed to such exploitation. Traffickers involved in land border trafficking to South Africa were typically long-distance truck drivers and local businesswomen.

Unlike in previous years, there were no reports of persons being trafficked to Europe, or being stranded in European brothels.

On July 28, the President chaired an inter-ministerial meeting dealing with the issue of human trafficking; on July 29 high-level

government officials participated in a seminar to discuss how best to combat human trafficking. In September, the Ministry of Home Affairs hosted a 3-day regional anti-trafficking conference.

Due to extremely limited resources, the Government was unable to provide funding for NGO services to victims of trafficking. During the year, police contacted NGOs for assistance when presented with possible victims.

Persons with Disabilities

The Constitution provides for the support of persons with disabilities through greater access to public places, fair opportunities in employment, and full participation in all spheres of society; however, the Government generally did not enforce the laws in practice, due to extremely limited resources. Reported violations were taken seriously and the President publicly declared that students with disabilities should have equal access to education and other government services. The Government has not mandated accessibility to buildings and services for persons with disabilities. There were both public and privately supported schools and training centers that assisted persons with disabilities. There also were several self supporting businesses run by and for persons with disabilities. The Minister of Social Development and Persons With Disabilities was a person with disabilities.

During the 2004 elections, some accommodations were made for voters with disabilities. Voters requiring assistance were permitted to bring an assistant into the voting booth with them.

Other Societal Abuses and Discrimination

Homosexuality is illegal, although there were no prosecutions for homosexuality during the year. In previous years, this law was used to strengthen cases against men accused of molesting young boys.

Societal discrimination against persons living with HIV/AIDS was widespread and inhibited access to treatment; many individuals preferred to keep silent about their health rather than seek help and risk being ostracized. The Ministry of Labor and Vocational Training (MOLVT) conducted a public relations program to reduce the stigma associated with having HIV/AIDS.

Section 6 Worker Rights

a. The Right of Association

The law allows workers to form and join trade unions and workers exercised this right in practice; however, union membership was low due to the small percentage of the workforce in the formal sector, the lack of awareness of worker rights and benefits, and a resistance on the part of many employees to join unions. Army personnel and police could not belong to trade unions, but other civil servants were allowed to form unions. Union leaders estimated that 12 percent of the formal sector workforce belonged to unions; however, accurate statistics on the numbers of union members were not available. Employers, labor unions, and the Government lacked sufficient knowledge of their legitimate roles in labor relations and disputes, which limited their effectiveness in the implementation and enforcement of the law.

Unions must register with the Registrar of Trade Unions and Employers' Organizations in the MOLVT, and registration was routinely granted. At year's end, 26 unions were registered.

The law prohibits anti-union discrimination by employers and requires that employers reinstate workers dismissed because of union activities. Unlike in previous years, there were no reports of persons who were fired for their membership in unions.

b. The Right to Organize and Bargain Collectively

Unions have the right to organize and bargain collectively, and the Government protected this right in practice. The law requires that at least 20 percent of employees (excluding senior managerial staff) belong to a union before such a union can engage in collective bargaining at the enterprise level and at least 15 percent union membership for collective bargaining at the sector level. The law provides for the establishment of industrial councils in the absence of collective agreements for sector-level bargaining. Industrial council functions included wage negotiation, dispute resolution, and industry-specific labor policy development. In practice, the law was not effectively implemented due to lack of sufficient knowledge of the law among employers, trade unions, and government officials.

The law allows members of a registered union to strike or go through a formal mediation process overseen by the MOLVT, and workers exercised this right in practice. A strike can only occur after all settlement procedures established in a collective agreement (an understanding, not necessarily signed, reached by both parties to attempt mediation) and conciliation efforts have failed. Laws do not specifically prohibit retaliation against strikers. There was no prohibition on actions against unions that were not registered legally. Members of a registered union in "essential services" only have a limited right to strike. Essential services were specified as services whose interruption would endanger the life, health, or personal safety of the whole or part of the population, as determined by the Industrial Relations Court (IRC).

Arbitration rulings were legally enforceable; however, in practice, due to the lack of funding and 2 year case backlog, the IRC could not monitor cases and enforce the laws adequately.

At year's end, 14 firms held licenses to operate under export processing zone (EPZ) status, and all were operational. The full range of labor regulations applied to the EPZs; however, union organizers said they had little access to workers in the EPZs. The 2002 International Confederation of Free Trade Unions (ICFTU) survey noted that companies in the EPZs were also resistant to union activity.

c. Prohibition of Forced or Compulsory Labor

The Constitution prohibits forced or compulsory labor, including by children; however, such labor occurred (see Sections 5 and 6.d.). According to the ICFTU, bonded labor involving entire families was widespread on tobacco plantations. Tobacco tenants have exclusive arrangements, often unwritten, with the estate owners to sell their crop and to buy inputs such as fertilizer, seed, and often food. These costs, in addition to rent charges, often were greater than the artificially low price received for the tobacco crop, leading to a situation of debt and bonded labor to repay the input and other costs.

d. Prohibition of Child Labor and Minimum Age for Employment

The Constitution defines children as persons under 16 years of age, and the law prohibits the employment of persons less than 14 years of age; however, child labor was a problem. The law also prohibits the employment of children less than 18 years of age in work that was hazardous, harmful, or interferes with their education. There was no special legal restriction on children's work hours, though during the year the Government began work on a code of conduct to specify work hours for children. There was significant child labor on tobacco and tea farms, subsistence farms, and in domestic service, largely as a result of extreme poverty and longstanding cultural traditions. One local NGO reported that in urban areas, it was common to find young girls working outside of their family as domestic servants, receiving little or no wages. School-aged children often worked as vendors. The results of a May 2002 MOLVT study on child labor in the country were released in July. The study indicated that 72 percent of children were in school, and 84 percent of children were working either in or outside of their homes.

In October, an International Labor Organization (ILO) report noted a rise in the number of children doing "ganyu" (piecework) on the land to earn money to buy food or support their families. According to the ILO, 11 percent of children ages 10 and 11 were informally employed, and an estimated 42 percent of young people between ages 15 and 19 participated in the labor market.

Budgetary constraints hindered minimum work age and child labor law enforcement by police and MOLVT inspectors. In 2003, the Government trained approximately 120 labor officers in child labor monitoring, and has held refresher training since that time. During the year, the MOLVT youth committees in rural areas monitored and reported on child labor.

e. Acceptable Conditions of Work

The MOLVT sets separate urban and rural minimum wage rates based on recommendations of the Tripartite Wage Advisory Board (TWAB) composed of representatives of labor, Government, and the private sector. However, the TWAB encountered problems due to inefficient organizational structure and inadequate funding, which hindered timely and accurate revision of the wage rate recommendations. The urban minimum wage amounted to approximately \$0.53 (MK 56) per day; in all other areas, it was approximately \$0.38 (MK 40) per day. Minimum wage rates did not provide a decent standard of living for a worker and family. Wage earners often supplemented their incomes through farming activities. The MOLVT lacked the resources to enforce the minimum wage effectively. However, the minimum wage largely was irrelevant for the great majority of citizens, who earned their livelihood outside the formal wage sector.

The maximum legal workweek was 48 hours, with a mandatory weekly 24-hour rest period. The laws require payment for overtime work and prohibit compulsory overtime. In practice, employers frequently violated statutory time restrictions.

The law includes extensive occupational health and safety standards; however, MOLVT enforcement of these standards was erratic. Workers particularly in industrial jobs often worked without basic safety clothing and equipment. Workers dismissed for filing complaints about workplace conditions have the right to file a complaint at the labor office or sue the employer for wrongful dismissal. Workers have the right to remove themselves from dangerous work situations without jeopardy to continued employment; however, given the low level of education of most workers and the high level of unemployment, workers were unlikely to exercise this right.

Mechanisms for protecting internationally recognized worker rights were weak. There were serious manpower shortages at the MOLVT; as a result, there were almost no labor standards inspections.

The law protects foreign workers in correct legal status. Illegal foreign workers were subject to deportation.